

Washington, D.C. 20530

FEB 2 1978

Honorable James T. McIntyre
Acting Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. McIntyre:

This is in response to your request for the views of the Department of Justice on a draft bill to amend section 5(d) of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403f(d)), "to authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances."

Review of the general powers and responsibilities of the Director of Central Intelligence, as specified in the Act, indicates by fair implication that the Director not only may but should as necessary arm personnel engaged in the performance of their duties outside the United States and engaged within the United States in the protection of national security information, Agency property, designated Agency personnel, and defectors or others who come to the United States under Agency auspices. It would be remarkable indeed if the Agency's vital and sensitive functions could not be carried out with adequate physical security. Appropriate weaponry is, of course, an integral part of such security.

Amendment of the Act, as proposed, would provide express authority to arm Agency personnel engaged in the activities described above. Generally, authorization of Federal personnel to carry arms is so expressly stated. See, e.g., 18 U.S.C. 3053. The section of the Act to be amended is itself such an express authorization, from which one could argue against implying other authorization. Thus we concur in the need for the proposed legislation as a

matter of clarification. We also recommend adoption of the substitute for the third paragraph of the Agency's transmittal letters as proposed in the attached Agency memorandum of December 20, 1977, to us on the draft bill.

Because of the peril to the general population posed by the circulation of armed persons in their midst, we do recommend minimization of the number of agency personnel who may be designated for armed protection. We believe this should be done through a statutory limitation, accomplished by inserting the following after the words "designated by the Director" in subsection (d)(iii):

", such designations to be made only upon personal determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 90 days, whichever is sooner."

The letters of transmittal and sectional analysis should incorporate suitable reference to the added limitation. Note, we would not oppose inclusion of the Deputy Director as a person protected without limitation. This could be accomplished by adding in subsection (d)(iii) before the words "and other Agency" the words ", Deputy Director".

The Department of Justice recommends enactment of this legislation amended as suggested above.

Sincerely,

(Signed) Patricia M. Wald

Patricia M. Wald
Assistant Attorney General